

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

CC Docket 96-45

Federal-State Joint Board on Universal Service)

T-MOBILE USA, INC. PETITION FOR WAIVER

Pursuant to Section 1.3 of the Federal Communications Commission's Rules,¹ T-Mobile USA, Inc. ("T-Mobile") respectfully requests that the Commission grant a waiver of its Universal Service Fund ("USF") rules that direct the Universal Service Administrative Company ("USAC") to use projected first quarter 2003 revenues for the 2003 annual "true up" process. Specifically, T-Mobile requests that it be allowed to revise its first quarter 2003 projected interstate and international end-user revenues to reflect its historical gross billed revenues for first quarter 2003 reported on its Form 499Q filed May 1, 2003, adjusted to reflect the annual uncollectible rate reported on its FCC Form 499-A filed April 1, 2004. This petition asks for the same relief recently granted by the Commission to AT&T Corp. ("AT&T"), SBC Communications, Inc. ("SBC") and the Verizon telephone companies ("Petitioners").² Like the Petitioners, T-Mobile understated projected revenues for the first quarter of 2003, causing its USF obligation for all of 2003 to be overstated. This relief is necessary to ensure that T-Mobile contributes no more than its equitable share into the Universal Service Fund and is treated

47 C.F.R. § 1.3.

² *Federal-State Joint Board on Universal Service*, CC Docket 96-45, FCC 04-170 (rel. July 20, 2004) (*Waiver Order*)

in a non-discriminatory manner in relation to similarly situated carriers, as required by Section 254(d) of the Communications Act of 1934, as amended (*Act*).

DISCUSSION

Section 1.3 provides that the Commission may waive its rules “if good cause therefore is shown.”³ Generally, a waiver is appropriate if “special circumstances warrant deviation from the general rule and such deviation will serve the public interest.”⁴ In this case, granting a waiver of the USF rules is warranted to ensure that the true-up mechanism operates as intended by the rule and statute.

In its 2002 *Interim Contribution Methodology Order*,⁵ the Commission modified its revenue-based universal service assessment system. Among other things, the Commission decided that beginning in the second quarter of 2003, carriers’ universal service contributions would no longer be based on historical gross-billed revenues. Instead, their contributions would be based on self-provided projections of collected revenues.⁶ In addition, the *Interim Contribution Methodology Order* established an annual true-up mechanism intended to ensure that carriers neither over- nor under-contributed to the USF.

47 C.F.R. § 1.3

⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

⁵ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 *et al.*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) (*Interim Contribution Methodology Order*).

See *id.*, 17 FCC Rcd at 24970.

The Commission refined the true-up process in its *Order and Second Order on Reconsideration*⁷ to allow for the transition to the new projected-revenue based methodology.⁸ The Commission stated:

[The Administrator] will subtract revenues projected for the first quarter of 2003 from annual revenues reported on the FCC Form 499-A to arrive at an estimate of a contributor's actual revenues for the second through fourth quarters of 2003. [The Administrator] will then compare this amount to the sum of revenues projected for the second through fourth quarters of 2003 to determine whether a refund or collection is appropriate.⁹

Earlier this year, AT&T, SBC and Verizon requested waivers of the revised true-up process.¹⁰ The Petitioners requested that they be permitted to revise their first quarter 2003 revenue projections and substitute their actual interstate and international revenues for that quarter. They argued that unless their request was granted, they would be forced to pay true-up amounts in excess of their appropriate contributions for the second through fourth quarters of 2003. By under-projecting their first quarter 2003 revenues, their revenue amounts for the remainder of the year (*i.e.*, those amounts used to calculate their USF contributions) became artificially and erroneously inflated.

On July 20, 2004, the Commission granted, in part, the Petitioners' waiver requests.¹¹ In its Order, the Commission noted that Section 254 of the Act requires

⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 *et al.*, Order and Second Order on Reconsideration, 18 FCC Rcd 4818 (2003) (*Reconsideration Order*).

⁸ *Id.*

Id., 18 FCC Rcd at 4825.

¹⁰ See AT&T Petition for Waiver, CC Docket No. 96-45 (filed January 27, 2004); SBC Petition for Waiver, CC Docket No. 96-45 (filed Feb. 27, 2004); Verizon Petition for Waiver, CC Docket No. 96-45 (filed Feb. 27, 2004).

Waiver Order at ¶ 9.

interstate carriers to contribute to the USF on an *equitable and nondiscriminatory basis*.¹² It further noted that consistent with section 254 of the Act, “the purpose of the annual true-up process is to ensure that interstate telecommunications providers contribute appropriate amounts to the universal service mechanisms.”¹³ Because the revised true-up procedures led the Petitioners to contribute more than their equitable share to the USF, the Commission found that the Petitioners had demonstrated special circumstances warranting deviation from the rules. The Commission further held that grant of the waiver was in the public interest since first quarter 2003 revenues (as distinct from projected revenues) were not used in calculating their USF contributions.¹⁴ In waiving the true-up procedures for 2003, the Commission adopted an alternative methodology to that proposed by the Petitioners to determine an appropriate contribution:

We direct the Administrator to subtract Petitioners’ historical gross billed revenues for first quarter 2003 reported on their Form 499-As, when conducting true-ups for the Petitioners. Although these amounts may not precisely equal the Petitioners’ collected revenues for the quarter, they will yield significantly more accurate true-up results than would their projections.¹⁵

T-Mobile faces the same circumstances as the Petitioners in the Commission’s Waiver Order. Like AT&T, SBC and Verizon, T-Mobile’s actual collected revenues exceeded its projections of collected revenues for first quarter 2003. As a consequence, T-Mobile will contribute nearly \$3.3 million more than its equitable share to the USF under the 2003 true-up procedures. T-Mobile respectfully submits that the Commission

¹² *Id.*, at ¶ 7, citing 47 U.S.C. § 254(d) (*emphasis added*).

¹³ *Id.* (*further citations omitted*).

Id.

¹⁵ *Id.* at ¶ 8.

should find that under these circumstances a deviation from the 2003 true-up procedures is warranted and grant of a waiver is in the public interest. Requiring T-Mobile to contribute \$3.3 million in excess of its fair share to the USF would be patently unfair, discriminatory, violative of section 254 of the Act, and now contrary to Commission precedent. Accordingly, T-Mobile requests the Commission to extend the relief granted in the *Waiver Order* to T-Mobile. In particular, T-Mobile requests that the Administrator be directed to apply the true-up procedure as modified by the Commission in paragraph 8 of the *Waiver Order* for the purpose of truing up T-Mobile's 2003 USF contributions.

CONCLUSION

For the foregoing reasons, T-Mobile respectfully requests that the Commission grant the waiver requested herein

Respectfully submitted,

T-Mobile USA, Inc.

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